

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 271

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-14-31-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26. (a) **Except as provided in subsection (c)**, the following persons, in the priority listed, have the right to serve as an authorizing agent:

(1) **An individual who possesses a health care power of attorney of the decedent, unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body.**

(2) The individual who was the spouse of the decedent at the time of the decedent's death.

(2) (3) The decedent's surviving adult children. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the crematory authority receives a written objection to the cremation from another adult child.

(3) (4) The decedent's surviving parent. If the decedent is survived by both parents, either parent may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from the other parent.

(4) (5) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one

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(1) individual of the same degree is surviving, any person of that degree may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from one (1) or more persons of the same degree.

~~(5)~~ **(6)** In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1) through ~~(4)~~ **(5)** of this section are available:

- (i) a public administrator, including a responsible township trustee or the trustee's designee; or
- (ii) the coroner.

(B) A state appointed guardian.

However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if cremation would be contrary to the religious practices of the deceased individual as expressed by the individual or the individual's family.

~~(6)~~ **(7)** In the absence of any person under subdivisions (1) through ~~(5)~~; **(6)**, any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(b) When a body part of a nondeceased individual is to be cremated, a representative of the institution that has arranged with the crematory authority to cremate the body part may serve as the authorizing agent.

(c) If:

(1) the death of the decedent appears to have been the result of:

- (A) murder (IC 35-42-1-1);**
- (B) voluntary manslaughter (IC 35-42-1-3); or**
- (C) another criminal act, if the death does not result from the operation of a vehicle; and**

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not serve as the authorizing agent.

(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the crematory authority of the determination referred to in subsection (c)(2).

SECTION 2. IC 23-14-55-2 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) **Except as provided in subsection (d)**, the owner of a cemetery is authorized to inter, entomb, or inurn the body or cremated remains of a deceased human upon the receipt of a written authorization of an individual who professes **either of the following**:

(1) To be (in the priority listed) **one (1) of the following**:

~~(A) surviving spouse; or~~

~~(B) surviving child; parent; or next of kin;
of the decedent; or~~

(A) An individual who possesses a health care power of attorney of the decedent, unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body.

(B) The individual who was the spouse of the decedent at the time of the decedent's death.

(C) The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the owner of the cemetery receives a written objection to the disposition from another adult child.

(D) The decedent's surviving parent. If the decedent is survived by both parents, either parent may serve as the authorizing agent unless the cemetery owner receives a written objection to the disposition from the other parent.

(E) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree of kinship is surviving, any person of that degree may serve as the authorizing agent unless the cemetery owner receives a written objection to the disposition from one (1) or more persons of the same degree of kinship.

(2) To have acquired the right to control the disposition of the deceased human body or cremated remains.

~~but~~ **The owner of a cemetery may accept the authorization of an individual** only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, **are barred from authorizing the disposition of the deceased human body or cremated remains under subsection (d)**, or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

(b) A cemetery owner is not liable in any action for making an

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interment, entombment, or inurnment under a written authorization described in subsection (a) unless the cemetery owner had actual notice that the representation made under subsection (a) by the individual who issued the written authorization was untrue.

(c) An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

(d) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

(e) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner of the determination referred to in subsection (d)(2).

SECTION 3. IC 25-15-9-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. **(a) Except as provided in subsection (b), the following persons, in the order of priority indicated, have the authority to designate the manner, type, and selection of the final disposition and interment of human remains:**

(1) An individual who possesses a health care power of attorney of the decedent, unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body.

(~~1~~) (2) The decedent's surviving individual who was the spouse of the decedent at the time of the decedent's death.

(~~2~~) (3) The decedent's surviving adult child, or children. However, if the children cannot agree on the manner of final disposition, the personal representative of the decedent's estate. If more than one

(1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless

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the licensed funeral director or licensed funeral home receives a written objection from another adult child.

~~(3)~~ (4) The decedent's surviving ~~parents~~ parent. If the decedent is survived by both parents, either parent has the authority unless the licensed funeral director or licensed funeral home receives a written objection from the other parent.

~~(4)~~ The personal representative of the decedent's estate.

(5) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree survives, any person of that degree has the authority unless the licensed funeral director or licensed funeral home receives a written objection from one (1) or more persons of the same degree.

(6) In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1) through (5) is available:

- (i) a public administrator, including a responsible township trustee or the trustee's designee; or
- (ii) the coroner.

(B) A state appointed guardian.

(b) If:

(1) the death of the decedent appears to have been the result of:

- (A) murder (IC 35-42-1-1);
- (B) voluntary manslaughter (IC 35-42-1-3); or
- (C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize or designate the manner, type, or selection of the final disposition and interment of human remains.

(c) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the crematory authority of the determination of the person referred to in subsection (b)(2).

SECTION 4. IC 30-2-13-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 23. (a) A contract is

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invalid if the contract allows the purchaser the right to:

- (1) convert, substitute, or exchange the purchase of burial rights for the purchase of services or merchandise;
- (2) free services or merchandise in exchange for the purchase of other services or merchandise; or
- (3) receive cash or gifts, other than burial rights and services and merchandise, with a value of more than fifty dollars (\$50) as an inducement to purchase a contract.

(b) A contract is unenforceable if:

- (1) the contract obligates the seller to provide prepaid services or merchandise for a named individual in conjunction with the death, burial, or final disposition of the individual;**
- (2) the purchaser under the contract is described in section 9(b)(4) of this chapter;**
- (3) the death of the named individual appears to have been the result of:**

- (A) murder (IC 35-42-1-1);**
- (B) voluntary manslaughter (IC 35-42-1-3); or**
- (C) another criminal act, if the death does not result from the operation of a vehicle; and**

- (4) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that the purchaser referred to in subdivision (2) committed the offense.**

The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the seller of the determination of the purchaser described in subdivision (4).

SECTION 5. IC 36-2-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Whenever the coroner is notified that a person in the county:

- (1) has died from violence;
- (2) has died by casualty;
- (3) has died when apparently in good health;
- (4) has died in an apparently suspicious, unusual, or unnatural manner; or
- (5) has been found dead;

he the coroner shall, before the scene of the death is disturbed, notify a law enforcement agency having jurisdiction in that area. The agency shall assist the coroner in conducting an investigation of how the person died and a medical investigation of the cause of death. **The coroner may hold the remains of the decedent until the investigation of how the person died and the medical investigation**

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of the cause of death are concluded.

(b) The coroner shall file with the person in charge of interment a coroner's certificate of death within seventy-two (72) hours after being notified of the death. If the cause of death is not established with reasonable certainty within seventy-two (72) hours, the coroner shall file with the person in charge of interment a coroner's certificate of death, with the cause of death designated as "deferred pending further action". As soon as ~~he~~ **the coroner** determines the cause of death, the coroner shall file a supplemental report indicating ~~his~~ **the** exact findings with the local health officer having jurisdiction, who shall make it part of ~~his~~ **the** official records.

(c) If this section applies, the body and the scene of death may not be disturbed until the coroner has photographed them in the manner that most fully discloses how the person died. However, a coroner or law enforcement officer may order a body to be moved before photographs are taken if the position or location of the body unduly interferes with activities carried on where the body is found, but the body may not be moved from the immediate area and must be moved without substantially destroying or altering the evidence present.

(d) When acting under this section, if the coroner considers it necessary to have an autopsy performed, is required to perform an autopsy under subsection (f), or is requested by the prosecuting attorney of the county to perform an autopsy, the coroner shall employ a physician:

- (1) certified by the American board of pathology; or
- (2) holding an unlimited license to practice medicine in Indiana and acting under the direction of a physician certified by the American board of pathology;

to perform the autopsy. The physician performing the autopsy shall be paid a fee of at least fifty dollars (\$50) from the county treasury. A coroner may employ the services of the medical examiner system, provided for in IC 4-23-6-6, when an autopsy is required, as long as this subsection is met.

(e) If:

- (1) at the request of:
 - (A) the decedent's spouse;
 - (B) a child of the decedent, if the decedent does not have a spouse;
 - (C) a parent of the decedent, if the decedent does not have a spouse or children;
 - (D) a brother or sister of the decedent, if the decedent does not have a spouse, children, or parents; or

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(E) a grandparent of the decedent, if the decedent does not have a spouse, children, parents, brothers, or sisters;

(2) in any death, where two (2) or more witnesses who corroborate the circumstances surrounding death are present; and

(3) two (2) physicians who are licensed to practice medicine in the state and who have made separate examinations of the decedent certify the same cause of death in an affidavit within twenty-four (24) hours after death;

an autopsy need not be performed. The affidavits shall be filed with the circuit court clerk.

(f) A county coroner may not certify the cause of death in the case of the sudden and unexpected death of a child who is at least one (1) week old and not more than three (3) years old unless an autopsy is performed at county expense. However, a coroner may certify the cause of death of a child described in this subsection without the performance of an autopsy if subsection (e) applies to the death of the child.

(g) After consultation with the law enforcement agency investigating the death of a decedent, the coroner shall do the following:

- (1) Inform a crematory authority if a person is barred under IC 23-14-31-26(c) from serving as the authorizing agent with respect to the cremation of the decedent's body because the coroner made the determination under IC 23-14-31-26(c)(2) in connection with the death of the decedent.**
- (2) Inform a cemetery owner if a person is barred under IC 23-14-55-2(d) from authorizing the disposition of the body or cremated remains of the decedent because the coroner made the determination under IC 23-14-55-2(d)(2) in connection with the death of the decedent.**
- (3) Inform a seller of prepaid services or merchandise if a person's contract is unenforceable under IC 30-2-13-23(b) because the coroner made the determination under IC 30-2-13-23(b)(4) in connection with the death of the decedent.**

SECTION 6. IC 36-2-14-18, AS AMENDED BY P.L.141-2006, SECTION 113, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) Notwithstanding IC 5-14-3-4(b)(1), when a coroner investigates a death, the office of the coroner is required to make available for public inspection and copying the following:

- (1) The name, age, address, sex, and race of the deceased.
- (2) The address where the dead body was found, or if there is no

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address the location where the dead body was found and, if different, the address where the death occurred, or if there is no address the location where the death occurred.

(3) The name of the agency to which the death was reported and the name of the person reporting the death.

(4) The name of any public official or governmental employee present at the scene of the death and the name of the person certifying or pronouncing the death.

(5) Information regarding an autopsy (requested or performed) limited to the date, the person who performed the autopsy, where the autopsy was performed, and a conclusion as to:

(A) the probable cause of death;

(B) the probable manner of death; and

(C) the probable mechanism of death.

(6) The location to which the body was removed, the person determining the location to which the body was removed, and the authority under which the decision to remove the body was made.

(7) The records required to be filed by a coroner under section 6 of this chapter and the verdict and the written report required under section 10 of this chapter.

(b) A county coroner or a coroner's deputy who receives an investigatory record from a law enforcement agency shall treat the investigatory record with the same confidentiality as the law enforcement agency would treat the investigatory record.

(c) Notwithstanding any other provision of this section, a coroner shall make available a full copy of an autopsy report, other than a photograph, video recording, or audio recording of the autopsy, upon the written request of ~~the~~ **a parent of the decedent, an adult child of the decedent, a next of kin of the decedent, or of an insurance company investigating a claim arising from the death of the individual upon whom the autopsy was performed. The A parent of the decedent, an adult child of the decedent, a next of kin of the decedent, and an insurance company is are** prohibited from publicly disclosing any information contained in the report beyond that information that may otherwise be disclosed by a coroner under this section. This prohibition does not apply to information disclosed in communications in conjunction with the investigation, settlement, or payment of the claim.

(d) Notwithstanding any other provision of this section, a coroner shall make available a full copy of an autopsy report, other than a photograph, video recording, or audio recording of the autopsy, upon the written request of:

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- (1) the director of the division of disability and rehabilitative services established by IC 12-9-1-1;
- (2) the director of the division of mental health and addiction established by IC 12-21-1-1; or
- (3) the director of the division of aging established by IC 12-9.1-1-1;

in connection with a division's review of the circumstances surrounding the death of an individual who received services from a division or through a division at the time of the individual's death.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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